

SUSMAN GODFREY L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
ONE MANHATTAN WEST
NEW YORK, NEW YORK 10001
(212) 336-8330
FAX (212) 336-8340
WWW.SUSMANGODFREY.COM

SUITE 5100
1000 LOUISIANA STREET
HOUSTON, TEXAS 77002-5096
(713) 651-9366

SUITE 1400
1900 AVENUE OF THE STARS
LOS ANGELES, CALIFORNIA 90067-6029
(310) 789-3100

SUITE 3000
401 UNION STREET
SEATTLE, WASHINGTON 98101-2683
(206) 516-3880

WILLIAM CHRISTOPHER CARMODY
DIRECT DIAL (212) 336-8334

E-MAIL BCARMODY@SUSMANGODFREY.COM

October 4, 2024

VIA ECF

The Honorable Naomi Reice Buchwald
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *In re LIBOR-Based Financial Instruments Antitrust Litigation*, 11-md-2262

Dear Judge Buchwald:

Pursuant to Section 2.E.1 of Your Honor's Individual Practices, I write to outline the substantive arguments set forth in Plaintiffs'¹ Motion to Exclude Certain Opinions of Dr. Dennis Carlton, an expert witness proffered by Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (collectively, "JPM").

In antitrust cases, an expert may *not* opine as to "whether a conspiracy existed or anticompetitive conduct actually occurred." *U.S. Info. Sys., Inc. v. Int'l Bhd. of Elec. Workers Loc. Union No. 3, AFL-CIO*, 313 F. Supp. 2d 213, 241 (S.D.N.Y. 2004); *see also, e.g., B&R Supermarket, Inc. v. Visa Inc.*, No. 17-cv-2738 (MKB), 2024 WL 4252031, at *14 (E.D.N.Y. Sept. 20, 2024) (explaining that expert could not testify to "whether a conspiracy in fact existed").

Dr. Carlton violates this blackletter law and offers the opinion that, in fact, JP Morgan was not a member of the alleged conspiracy. The Court should grant Plaintiffs' Motion because the ultimate issue of whether JPM conspired to suppress LIBOR in violation of the Sherman Act is within "the province of the trier of fact." *U.S. Info. Sys.*, 313 F. Supp. 2d at 241.

¹ OTC Plaintiffs, the Federal Deposit Insurance Corporation as Receiver for 20 Closed Banks, Principal Financial Group, Inc., Principal Financial Services, Inc., Principal Life Insurance Company, Principal Funds, Inc., and Principal Variable Contracts Funds, Inc.

October 4, 2024
Page 2

Respectfully submitted,

/s/ William Christopher Carmody

William Christopher Carmody
SUSMAN GODFREY L.L.P.

Co-Lead Counsel for OTC Plaintiffs and Liaison Counsel for Class Plaintiffs

/s/ James R. Martin

James R. Martin
ZELLE LLP

*Counsel for The Federal Deposit Insurance Corporation as Receiver for 20
Closed Banks and Liaison Counsel for Direct Action Plaintiffs*